

701—63.23(452A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections 422.52(3) and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

63.23(1) When required.

a. Classes of business. When the director determines, based on departmental records, other state or federal agency statistics or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

b. New applications for fuel tax permits. Notwithstanding the provisions of paragraph "a" above, an applicant for a new fuel tax permit will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph "c" below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in "c" or such person had a previous fuel tax permit which has been revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous license holder. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. Existing license holders. Existing license holders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or filing timely returns during the last 18 months if filing returns on a quarterly basis or have had two or more delinquencies during the last 12 months if filing returns on a monthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 63.27(452A). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27.

d. Waiver of bond. If a license holder has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the license holder maintains a good filing record for a period of two years, the license holder may request that the department waive the continued bond or security requirement.

63.23(2) Type of security or bond. When it is determined that a license holder or applicant for a fuel tax permit is required to post collateral to secure the collection of the motor fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, the following: (1) cashier's check, (2) money order or (3) certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a license holder elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the license holder is a corporation, an officer of the corporation may assume personal responsibility, as security for the payment of the fuel tax will be evaluated as provided in (1) above as if the officer applied for a fuel tax permit as an individual.

63.23(3) *Amount of bond or security.* When it is determined that a license holder or applicant for a fuel tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the license holder or applicant will be or is a monthly filer, a bond or securities in an amount sufficient to cover five months' fuel tax liability will be required. If the applicant or license holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement Iowa Code sections 422.52(3) and 452A.66.